



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/162718

PRELIMINARY RECITALS

Pursuant to a petition filed December 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on January 13, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner’s request for Personal Care Worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. October 3, 2014, Golden Path Home Care, Inc. (Golden Path) completed a Personal Care Screening Tool (PCST) and determined the Petitioner needed assistance with her activities of daily living as follows:

Bathing – Level C

Dressing Upper Body – Level D

Dressing Upper Body – Level C

Grooming – Level C

Eating – Level A

Mobility – Level C

Toileting – Level B

Transferring – Level B

Medically Oriented Tasks – Medication reminder three times per day and ointment application two times per day.

(Exhibit 3)

3. On October 14, 2014, Golden Path submitted, on behalf of Petitioner, a request for prior authorization of 75 units / 18.75 hours per week of PCW services for 53 weeks with an additional 28 units / 7 hours per week travel time for the PCW. This is at a cost of \$109,180.00. (Exhibit 3)
4. On November 12, 2014, the Department of Health Services (DHS) sent the Petitioner and Golden Path notices indicating that the request for services was modified. (Exhibit 3)
5. The Department of Health Services approved 29 units / 7.25 hours per week of PCW services with 7 hours per week of travel time for the PCW. (Exhibit 2 and Exhibit 3)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 22, 2014. (Exhibit 1)
7. Petitioner lives alone. (Testimony of the Petitioner)
8. Petitioner is 52 years old and her primary diagnosis is chronic back pain. (Exhibit 3)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient’s medical condition or to maintain a recipient’s health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;

2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Golden Path, on behalf of Petitioner, requested 18.75 hours per week of active PCW service hours and seven hours per week of travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved the 7 hours per week of travel time for the PCW, but modified the request for active PCW service hours, reducing it from 18.75 to 7.25 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Golden Path, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 7 of the OIG letter, Exhibit 2.

The letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day, 2x per day, x 7 days	140 minutes per week
3. Grooming: zero minutes	zero minutes
4. Eating: zero minutes	zero minutes
5. Mobility: zero minutes	zero minutes
6. Toileting: zero minutes	zero minutes
7. Transfers: zero minutes	zero minutes
8. MOTs: zero minutes	zero minutes
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Total:	350 minutes week

Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week. There is nothing in the record to suggest the Petitioner needs more time for this task.

Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found in attachment 9 of Exhibit 2. They may also be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

DHS allowed the maximum amount of time permitted for the second episode of dressing both upper and lower body: 20 minutes per day x 7 days a week = 140 minutes per week. There is nothing in the record to suggest this period of time is unreasonable.

Grooming

The PCST indicates that the Petitioner needs assistance with grooming at level C, because she needs help washing and setting her hair. The PCST indicates shampooing is done in the shower.

Level C assistance means, that a person is able groom herself, but requires the presence of another person to ensure completion of the task and to provide physical intervention for at least one step of the task. (PCST Instructions, pg. 7 of 14)

The Petitioner testified that she is able to brush her teeth and wash her face, but she needs help getting her hair in a ponytail.

According to page 6 of the PCST instructions, time for shampooing hair is included in the time allowed for bathing, not for grooming. In addition, styling hair, even in a pony-tail, is not included in the definition of grooming found on page 6 of the PCST instructions.

It should be noted that Petitioner's medical records do not make clear why the Petitioner would be unable to brush her own hair and put it in a pony-tail. Indeed, Petitioner's medical records only indicate issues with back pain and do not reflect any issues with her arms, shoulders or neck that would preclude the Petitioner from reach up and around her head to brush her hair and place it in a ponytail.

Based upon the foregoing, it is found that the record does not support the need for PCW assistance with grooming and that DHS correctly denied PCW time for the task of grooming.

Eating

The Petitioner does not dispute the fact that she is able to feed herself. As such, it is found that DHS correctly denied PCW time for this task.

Mobility

The PCST indicated that the Petitioner needs assistance at level C, in order to move about her home safely, meaning she requires the constant presence of a PCW to provide immediate physical intervention during the task. Specifically, the PCST stated that the Petitioner needs assistance, because her knees buckle.

Petitioner's medical records do not indicate any issues or instability with her knees. Petitioner's medical records only discuss Petitioner's struggle to manage her back pain. As such, the record does not support the need for PCW assistance with mobility and DHS correctly denied time for this task.

The nurse consultant did suggest a cost-effective alternative, if Petitioner does indeed have issues with her knees buckling – a seated walker.

Toileting

The PCST indicated that the Petitioner needs assistance with toileting at level B. According to the Personal Care Activity Time Allocation table, no PCW time is allowed for individuals who might need assistance at level B. I note that at the hearing, the Petitioner testified that she is able to toilet herself. Accordingly, it is found that DHS correctly denied PCW time for the task of toileting.

Transfers

The PCST indicated that the Petitioner needs assistance with transfers at level B. The Personal Care Activity Time Allocation Table indicates that no PCW service hours are allowed for individuals who require level B assistance. In addition, the Petitioner testified that her bed is so low, that she is able to get in and out of bed on her own. As such, DHS correctly disallowed time for this task.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders and the application of a lidocaine ointment.

According to page 1 of the PCST instructions, the prior authorization request is limited by what is ordered by a physician in the plan of care. This instruction is based upon Wis. Admin. Code §DHS 107.112(1)(a) which states that personal care services, "shall be provided upon written orders of a physician...according to a written plan of care". In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists "Personal care services not documented in the plan of care" as a non-covered service.

The physician's order, in the Home Health Certification and Plan of Care submitted by Golden Path, contains no order for PCW services related to MOTs. As such, DHS correctly denied PCW time for medically oriented tasks.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, the actual time needed to completed Petitioner’s ADLs and MOTs is as follows:

1. Bathing	210 minutes per week
2. Dressing	140 minutes per week
3. Grooming	zero minutes per week
4. Eating	zero minutes per week
5. Mobility	zero minutes per week
6. Toileting	zero minutes per week
7. Transfers	zero minutes per week
8. MOTs	zero minutes per week

	350 minutes per week

Incidental Tasks

The PCST indicated that the Petitioner lived with a spouse or family member. However, at the hearing the Petitioner testified credibly that the PCST was incorrect and that she lives alone.

Per the on-line Provider Handbook, topic 3167, for individuals who live alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One third of 350 minutes is 166.67 minutes.

Thus, the total time allowed for PCW services works out to be:

350 minutes per week for ALDs
+116.67 minutes per week for incidental activities

466.67 minutes per week

466.67 minutes ÷ 15 minutes per unit = 31.11 units per week rounded to 32 units per week
 32 units per week = 8 hours per week of personal care services.

DHS approved 7.25 hours of personal care service hours per week. As such, its modification was not entirely correct; it was short 45 minutes per week.

Petitioner should be aware that if Golden Path can show a medical need for more time, it can always submit a request [an amendment/a new prior authorization] for additional time, with evidence to show the need for the additional time.

I note to the petitioner that her provider, Golden Path will not receive a copy of this Decision. In order to have the requested personal care service hours approved, the petitioner must provide a copy of this Decision to Golden Path, who must then submit a new prior authorization request, along with a copy of this decision to receive the coverage approved below.

CONCLUSIONS OF LAW

DHS did not correctly modify the Petitioner’s request for PCW service hours.

THEREFORE, it is

ORDERED

That Golden Path is authorized to bill the Wisconsin Medicaid program for 32 units / 8 hours per week of PCW services. Golden Path should submit a copy of this decision to Forward Health, along with its invoice/request for prior authorization, for the additional time allowed herein.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of February, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 18, 2015.

Division of Health Care Access and Accountability